

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:

Sunset Partners, Inc.,
Debtor

Chapter 11
Case No. 17-12178-JNF

In re:

Bema Restaurant Corporation,
Debtor

Chapter 7
Case No. 17-12434-JNF
Jointly Administered

**CHAPTER 11 TRUSTEE'S MOTION FOR CONTINUED AUTHORITY
TO USE CASH COLLATERAL
[Emergency Determination Requested]**

Lynne Riley (the "Trustee"), the duly appointed Chapter 11 trustee of Sunset Partners, Inc. and Chapter 7 trustee of Bema Restaurant Corporation (the "Debtors") hereby moves under Bankruptcy Code §§ 361 and 363(c)(2) of the Bankruptcy Code, and MLBR 4001-2, authorizing the continued use of the cash collateral of the secured creditors of Debtor Sunset Partners, Inc., for the period from January 4, 2018 to January 31, 2018, on essentially the same terms as the existing cash collateral order entered in this case (doc. 177, dated December 19, 2017). **As set forth below, Sunset Partners' restaurant operations require payment of certain ongoing expenses, including wages, supplies and other expenses. The Trustee seeks to continue operations, and accordingly pursuant to MLBR 9013-1(g), emergency determination of this Motion.** The Court has previously scheduled this matter for January 4, 2018 at 11:00 a.m. In support of this Motion, the Trustee states as follows:

I. Introduction

1. Debtor Sunset Partners, Inc. filed a voluntary petition for relief on June 7, 2017.

Debtor Bema Restaurant Corporation filed a voluntary petition for relief on June 29, 2017.

Thereafter, the two affiliated debtors' cases were ordered to be jointly administered.

2. On September 22, 2017 (doc. no. 125), this Court entered an order directing the appointment of a Chapter 11 trustee, and on that date, the United States Trustee for this region appointed Lynne Riley as the Trustee in these cases (doc. no. 126). That appointment was confirmed by order dated September 25, 2017 (doc. no. 131).

3. The Court has previously entered a series of orders authorizing the Debtors' use of cash collateral. By this motion, the Trustee seeks continued use of cash collateral, on essentially the same terms as the Trustee's actual use, for the 4-week period ending January 30, 2018, and to set deadlines for further proceedings regarding the use of cash collateral before that date.

4. Since the granting of the prior cash collateral order, the Trustee closed two of the Debtors' restaurants and agreed to the conversion of the Bema Restaurant case to Chapter 7 proceedings. Following this, she and her accountants and manager developed a budget for the continued operation of the Sunset Cantina restaurant located at 916 Commonwealth Avenue, Brookline, MA. A proposed cash collateral budget for that operation is attached hereto.

II. Secured Creditors

5. The following is a summary of the Debtors' secured debt (collectively, the "Secured Creditors")¹.

6. Beginning in or about October of 2015, the Debtors entered into a financing arrangement with Harold Brown. As part of the transaction, Brown purchased the building in which two of the Debtors' restaurants are located. The obligation to Harold Brown is secured by lien on all of the Debtors' assets, although the lien on the Debtors' three alcohol licenses was not

¹ This presentation is from the Debtor's schedules and pleadings in the case and from filed proofs of claim. The Trustee reserves the right to review and if necessary challenge any and all claims against these estates.

properly perfected as of the Petition Date. As of the Petition Date, Sunset Partners owes Brown approximately \$4,200,000 and Bema owes Brown approximately \$3,246,000; certain of these amounts are co-obligations of both Debtors, so the total amount owed to Brown is less than the sum of these figures.

7. In or about February of 2016, the Debtor Sunset Partners entered into a financing arrangement with American Express Bank, FSB (the “American Express Obligation”). The American Express Obligation is secured by a lien on all of the Debtor’s assets, although the lien on the Debtors’ three alcohol licenses was not properly perfected as of the Petition Date. As of the Petition Date, American Express was owed approximately \$125,000.00

8. Between March 15, 2016 and July 5 of 2016, the DOR filed four (4) separate tax liens against the Sunset Partners’ property. As of the Petition Date, the DOR was owed approximately \$446,500 by Sunset Partners alleged to be secured; and approximately \$72,500 by Bema alleged to be secured.

9. The Massachusetts Department of Unemployment Assistance alleges that Sunset Partners owes it approximately \$71,600 on a secured basis; and that Bema owes it approximately \$49,970 on a secured basis.

10. In or about April of 2014, the Debtor Sunset Partners entered into an agreement with Lenox-Martell, Inc. (the “Lenox-Martell Obligation”) for the purchase of a soda mix system, a beer line cleaning system, and a mixed gas generator (the “Lenox-Martell Equipment”). The Lenox-Martell Obligation is secured by the Lenox-Martell Equipment. As of the Petition Date, Lenox-Martell was owed approximately \$7,700.00.

11. In or about June of 2014, the Debtor entered into agreement with US Foods, Inc. (the “US Foods Obligation”) for ongoing purchase and delivery of various goods, inventory, and

equipment (the “US Foods Inventory”). The US Foods Obligation is secured by the US Foods Inventory. As of the Petition Date, US Foods was owed approximately \$25,000.00.

III. Relief Requested

12. Section 363(c)(2) of the Code provides that, absent consent by the secured party, “The trustee may not use, sell or lease cash collateral under paragraph (1) of this subsection unless: (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section.” Section 363(e) of the Code requires that the court condition the use of cash collateral as is necessary to provide adequate protection to the secured creditor.

13. Section 361 of the Code provides that adequate protection may be provided by (1) making “a cash payment or periodic cash payments to [an] entity, to the extent that the stay under Section 362 of this title, use, sale, or lease under section 363 of this title . . . results in a decrease in the value of [the] entity’s interest in such property,” (2) “providing to [an] entity an additional or replacement lien to the extent that such . . . use . . . results in a decrease in the value of [the] entity’s interest in such property” or (3) “granting such other relief . . . as will result in the realization by [an] entity of the indubitable equivalent of [the] entity’s interest in such property.” *11 U.S.C. §§ 361(1), (2), (3)*.

14. What constitutes adequate protection is determined on a case-by-case basis. *See MBank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). The purpose is to protect a secured creditor from diminution in value of its interest in the collateral during the period of use by the Debtors. *See In re Ledgemere Land Corp.*, 116 B.R. 338, 343 (Bankr. D. Mass. 1990); *In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *Delbridge v. Production Credit Ass’n & Fed. Land Bank*, 104

B.R. 824, 827-28 (E.D. Mich. 1989); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

15. In the present case, the Trustee's continued operations are expected to yield a substantially higher value for the assets securing the Secured Creditors' claims. As further adequate protection, the Trustee proposes to provide continuing replacement liens and security interests in the post-petition accounts receivable (if any) to the Secured Creditors to same validity and extent and priority that they would have had in the absence of the bankruptcy filing.

16. The proposed budget attached hereto as Exhibit A (the "Budget") sets forth the Trustee's projections, developed with her accountants and based on operating experience since her appointment, for the 4-week period ending January 30, 2018. The proposed Budget shows the expected results of operations, without projecting the effect of a sale of any of the restaurants. Prior to the Trustee's appointment, the Debtors had received agreement from their landlords to defer certain rent payments. The Trustee has reached an agreement to reduce use and occupancy payment to the Sunset Cantina landlord as reflected in the Budget.

IV. Notice

3. Copies of this Motion and the Notice of the hearing thereon shall be furnished by ECF, fax or email to: (a) the Office of the United States Trustee for this district; (b) the Debtor's 20 largest unsecured creditors as reflected in the list filed by the Debtor pursuant to Fed. R. Bankr. P. 1007(d); (c) the Internal Revenue Service; (d) the Massachusetts Department of Revenue; (e) the Massachusetts Department of Unemployment Assistance; (f) the Massachusetts Department of Labor; (g) the Secured Creditors (collectively, the "Notice Parties"). The Trustee

submits that such service constitutes sufficient notice of this pleading in the particular circumstances.

WHEREFORE, the Trustee respectfully requests that this Court: (a) enter an order authorizing the Trustee to continue to use cash collateral to operate the estate's restaurant in accordance with the Budget through January 30, 2018; (b) set this matter for further proceedings, including possible continued use of cash collateral before that date, and (c) grant such other and further relief as this Court may deem just and proper.

LYNNE F. RILEY, CHAPTER 11 TRUSTEE

By her attorneys,

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DATED: January 2, 2018

Exhibit A

Sunset Partners, Inc. & Bema Restaurant Corporation								
Chapter 11: Case No 17-12178-JNF (Jointly Administered)								
Sunset Cantina								
13 Week Budget								
		1	2	3	4	5	6	
Week ending		12/26/2017	1/2/2018	1/9/2018	1/16/2018	1/23/2018	1/30/2018	Total
Cash Receipts	Weekly Sales	\$ 45,000	\$ 45,000	\$ 45,000	\$ 65,000	\$ 65,000	\$ 65,000	\$ 330,000
Operating Expenses								
	CGS (Purchases & Merchant Fees)- 38%	\$ 17,100	\$ 17,100	\$ 17,100	\$ 24,700	\$ 24,700	\$ 24,700	\$ 125,400
	Cable, Internet, and Telephone	\$ -	\$ -	\$ -	\$ 1,311	\$ -	\$ -	\$ 1,311
	Contingency	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 9,000
	Equip Maintenance	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 1,500
	Health Insurance	\$ -	\$ -	\$ 1,569	\$ -	\$ -	\$ -	\$ 1,569
	Insurance	\$ -	\$ -	\$ 180	\$ 4,432	\$ -	\$ -	\$ 4,612
	Meals Taxes	\$ -	\$ -	\$ -	\$ -	\$ 21,000	\$ -	\$ 21,000
	Music & Entertainment	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 3,000
	Office Supplies	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	\$ 1,200
	Payroll (Net)	\$ 39,544	\$ -	\$ 39,544	\$ -	\$ 39,544	\$ -	\$ 118,633
	Payroll Taxes	\$ 12,208	\$ -	\$ 12,208	\$ -	\$ 12,208	\$ -	\$ 36,623
	Rent	\$ -	\$ 12,000	\$ -	\$ -	\$ -	\$ 12,000	\$ 24,000
	Rubbish, Pest and Cesspool	\$ -	\$ 200	\$ -	\$ 2,700	\$ -	\$ 200	\$ 3,100
	Supplies	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 3,000
	Utilities	\$ -	\$ -	\$ -	\$ 10,000	\$ -	\$ -	\$ 10,000
	Water/Sewer	\$ -	\$ -	\$ -	\$ -	\$ 4,000	\$ -	\$ 4,000
Chapter 11 Expenses								
	Sysco PACA Claim	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	UST	\$ -	\$ -	\$ -	\$ -	\$ 3,250	\$ -	\$ 3,250
	Total Expenses	\$ 71,802	\$ 32,250	\$ 73,551	\$ 46,093	\$ 107,652	\$ 39,850	\$ 371,198
Net Cash Flow		\$ (26,802)	\$ 12,750	\$ (28,551)	\$ 18,907	\$ (42,652)	\$ 25,150	\$ (41,198)
Beginning Cash		\$ 49,779	\$ 22,977	\$ 35,727	\$ 7,176	\$ 26,083	\$ (16,569)	\$ 49,779
Ending Cash		\$ 22,977	\$ 35,727	\$ 7,176	\$ 26,083	\$ (16,569)	\$ 8,581	\$ 8,581